IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8983 OF 2004

Union Bank of India — Petitioner
vs.
Union of India & ors. — Respondents

Mr.M.Tally i/b.Mr.S.Mohdbhai & Co. for the petitioner

Mr.Rishabh Shah i/b. M/s.Raval Shah & Co. for respondents 2 and 3.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 20th April 2005

P.C.

At the outset, the learned counsel for the petitioner submits that the respondent no.1-Union of India is not necessary party and the petitioner may be permitted to delete the respondent no.1 from array of parties.

2. We accede to the request of the learned counsel for the petitioner and delete the Union of India from array of parties.

3. Rule. Returnable forthwith. M/s.Raval Shah & Co. Advocate on record waives service for the respondents.

4. At the request of the learned counsel, rule is heard finally at this stage.

5. The petitioner filed an original application before the Debts Recovery Tribunal III, Mumbai for recovery of Rs.10,83,240.12 ps. from the respondent nos. 2 and 3 before us with interest at the rate of 12% per annum compounded with quarterly rests from the date of the application until realisation.

6. The respondent nos. 2 and 3 herein did not file any written statement. For want of written statement, the averments in the original application went untraversed. The petitioner-Bank in support of its claim filed an affidavit of one Adhivarahan. The petitioner-Bank also proved various documents.

7. At the time of hearing of the original application inter alia an objection was taken by the present respondent nos. 2 and 3 that Tribunal had no jurisdiction to entertain the Bank's claim as it was below Rs.10,00,000/-.

8. The Tribunal though observed in paragraph 12 of its order that for considering pecuniary jurisdiction, it should be seen that the amount claimed was more than Rs. 10 lacs or not and if Exhibit "1" is perused, the amount claimed was certainly more than Rs.10 lacs, however, the Tribunal went into the evidence, considered few entries

and then reached the conclusion that the outstanding amount was less than Rs.10 lacs and, therefore, the Tribunal has no jurisdiction to entertain the Bank's claim. In this backdrop the original application (the plaint) filed by the Bank was ordered to be returned to the Bank for proper presentation. The order passed by the Debts Recovery Tribunal on 26th November 2002 was challenged by the Bank before Debts Recovery Appellate Tribunal. The Appellate Tribunal dismissed the appeal preferred by the Bank vide order dated 29th April 2004.

9. The order passed by the Debts Recovery Tribunal on 26th November 2002 and the order passed by the Debts Recovery Appellate Tribunal on 29th April 2004 are under challenge in this writ petition.

10. The matter should not detain us for a long as we find that the approach of the Debts Recovery Tribunal and the Debts Recovery Appellate Tribunal in considering the matter was wholly misconceived. As noticed above, the Debts Recovery Tribunal itself in its order observed that the amount claimed in the original application is more than Rs.10 lacs. It is a fact that the claim made by the Bank in original application is above Rs.10 lacs. No written statement was filed by the present respondent nos. 2 and 3 and, thus, the averments made in the original application remain untraversed. These facts

are sufficient to hold that the Debts Recovery Tribunal has pecuniary jurisdiction in the matter. If, during the trial, the Bank was not able to prove the entire claim made in the original application and if the claim proved by the Bank was below Rs.10 lacs, that did not mean that jurisdiction of the Debts Recovery Tribunal was ousted. It is strange that the Debts Recovery Tribunal and the Debts Recovery Appellate Tribunal when found that the claim to the extent prayed for in the original application was not proved and what has been proved is a claim for less than Rs.10 lacs, they held that the Debts Recovery Tribunal has no jurisdiction. We find it difficult to countenance the view of the Debts Recovery Tribunal and the Debts Recovery Appellate Tribunal. As a matter of fact, the learned counsel for the respondent nos. 2 and 3 despite his best efforts could not justify the impugned orders.

11. The request of the learned counsel for the respondent nos. 2 and 3 was that in the event of the matter being restored back to the file of Debts Recovery Tribunal III, Mumbai, an opportunity may be given to the present respondent nos. 2 and 3 for filing the written statement and that the Debts Recovery Tribunal may be directed to proceed with the matter afresh in accordance with law.

12. This course was not objected to by the learned counsel for the petitioner-Bank.

13. Consequently, writ petition is allowed. The order dated 26th November 2002 passed by the Debts Recovery Tribunal III, Mumbai and the order dated 29th April 2004 passed by the Debts Recovery Appellate Tribunal are set aside. Original Application No.2164/2000 is restored to the file of Debts Recovery Tribunal III, Mumbai. The respondent nos. 2 and 3 herein (defendants therein) are permitted to file written statement within three weeks from today. The Debts Recovery Tribunal III, Mumbai shall proceed with the original application further in accordance with law.

13. No costs.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)